S. NADARAJAH PILLAI & ANOR. v. HINDU ENDOWMENTS BOARD

[C.A. (Wee Chong Jin C.J., Choor Singh & Tan Ah Tah JJ.) August 20, 1974]

[Singapore — Civil Appeal No. 35 of 1973]

Arbitration — Withdrawal — Specific performance — Jurisdiction of Court — Powers of Hindu Endowments Board — Manner of determination of disputes relating to Hindu Endowments — Hindu Endowments Act (Cap. 306), s. 24.

The Sri Mariamman Temple was administered by the respondent, a Board constituted under the Hindu Endowments Act (Cap. 306). The appellants claimed the sole right to nominate a representative as the "Samayathar" for the fire walking ceremony conducted by the temple. Their claim was disputed by another section of the devotees of the temple. The dispute was referred to arbitration by agreement. In the course of the arbitration the arbitrator made an order for the flag hoisting ceremony to be postponed. The respondent challenged the jurisdiction of the arbitrator to make the order. The arbitration was terminated by the arbitrator. The appellants alleged that the respondent by challenging the jurisdiction of the arbitrator, withdrew from the arbitration and sued for specific performance of the arbitration agreement. Before the suit, the appellants did not apply to the Board for determination of the dispute and did not apply for permission to proceed against the section of the devotees who opposed their claim, in the Court of Law. The suit was dismissed. The court held there was no withdrawal from the arbitration. The appellant appealed against the dismissal.

Held: (1) section 24 of the Hindu Endowments Act disbars all courts from entertaining any legal proceedings brought without the sanction of the Board (the respondent) for relief concerning an endowment administered by the Board. The court can resolve this dispute only if the matter is placed before it with the prior sanction of the Board;

(2) the present proceedings commenced without compliance with section 24 of the Act were therefore rightly dismissed.

COURT OF APPEAL.

J. Grimberg and *J. B. Jeyaretnam* for the appellants.

H. E. Cashin for the respondent.

Choor Singh J. (delivering the judgment of the Court): This is an appeal against an order made by the High Court on the 4th October 1973 dismissing the appellants' application for specific performance of an arbitration agreement entered into between the appellants and the respondent on the 8th August 1972.

The facts are these. The appellants are members of the Indian Caulker community of Jalan Sultan, Singapore. This community consists of some 300 persons who live in and around the Jalan Sultan area and are engaged in the trade of caulking boats. They have a very long connection with the activities of a Hindu temple in South Bridge Road known as the Sri Mariamman Temple which is administered by the Hindu Endowments Board (hereinafter referred to as the Board) constituted under the Hindu Endowments Act (Cap. 306). The plaintiffs claim that the Caulker community of Jalan Sultan have the sole right and privilege to nominate a representative of their community as a Samayathar for the fire-walking ceremony which is conducted at this temple every year and that they have been doing this from the time the temple was built in the early part of the last century until 1960 when due to differences with the temple's management committee they left the temple. Thereafter the fire-walking ceremony at the temple was conducted by other devotees until 1971 when it is claimed that the Caulkers were invited back to the temple by the Board and their right to nominate a Samayathar was restored. This action on the part of the Board displeased another section of the devotees known as the Ubayakarars who disputed the right claimed by the Caulkers. The Board made several attempts to resolve this dispute between the Caulkers and Ubayakarars but without success as both sides were not willing to make any compromise. Finally, the plaintiffs, as representatives of the Caulker community, issued a Writ in the High Court in Suit No. 1675 of 1972 against the Board and the members of the management committee of the temple claiming the following reliefs: —

1. A Declaration that the plaintiffs by custom have become entitled and/or acquired the right to nominate a representative from amongst them and known as the Samayam to be appointed by the Sri Mariamman Temple Management Committee to assist the said Committee generally and in particular to be responsible on behalf of the said Committee for the due observance and performance of all religious rites and ceremonies from the Dwajarchana Ubayam to the Vidaiyatri Ubayam observed at the Sri Mariamman Temple.

2. An Injunction to restrain the defendants and each of them whether by themselves, their servants or agents from preventing or refusing to the plaintiffs the exercise of such rights and the participation of the Samayam at the observance of Ubayamsat the said Temple."

As soon as the Writ was served on the Board, the matter was brought to the notice of the Ministry of Social Affairs whereupon the Ministry called a meeting on the 8th August 1972 of all the interested parties with a view to resolving the dispute. At this meeting it was agreed by the parties that the matter should go to arbitration and that the decision of the arbitrator would be final.

Following the agreement to arbitrate, Mr. Lim Ewe Huat was, by consent of all parties, appointed arbitrator and he held his first arbitration hearing on the 2nd July 1973. At this hearing, the Board, the Caulkers and the Ubayakarars were all represented by counsel. Counsel for the Board sought an order for the flag-hoisting ceremony to be postponed pending the final decision of the arbitrator. This was agreed to by the Caulkers but opposed by the Ubayakarars. The arbitrator granted the order. Counsel for the Board then, as a preliminary point, challenged the jurisdiction of the arbitrator. He stated: —

"I now challenge the jurisdiction of the arbitrator. The Hindu Endowments Act gives the Board the right to manage all Hindu matters, including ceremonies of this kind. The Board has the power to decide on this dispute and the arbitrator has no jurisdiction here and any finding of his will not be binding on the Board. I am raising this as a preliminary point. I will advise my clients that any decision made by the arbitrator will be *ultra vires* the Hindu Endowments Act."

Counsel for the Caulkers maintained that both parties had agreed to the arbitration; that that agreement conferred jurisdiction on the arbitrator and that if the Board was now trying to back out, it had no right to do so.

The arbitrator terminated the arbitration with the following observation: —

"An arbitrator can only be appointed where both parties consent. Although both parties herein originally agreed on the arbitration, now one party has challenged on the jurisdiction. In view of the challenge made of my powers to hear the case under the Hindu Endowments Act, I concede that the supreme authority on all matters relating to the Hindu religion is in the hands of the Hindu Endowments Board. The Board has now raised the point on jurisdiction, that if I did hear the case, I would be acting *ultra vires* the Hindu Endowments Act. If my powers as arbitrator herein are challenged, there is no use for me to arbitrate on this dispute. In view of this, I will submit a report on this to the authority appointing me, and my order earlier that the flag-hoisting ceremony be postponed, is hereby rescinded."

The plaintiffs then commenced the present proceedings and claimed: —

(a) specific performance of the arbitration agreement entered into between the appellants and the respondent on the 8th August 1972;

(b) an order that the respondent submit to the arbitration of Mr. Lim Ewe Huat, the arbitrator appointed by the Minister for Social Affairs pursuant to the said agreement and be bound by his the said Mr. Lim Ewe Huat's decision.

At the hearing before Kulasekaram J. two issues were raised by the plaintiffs: —

(1) whether there was an arbitration agreement between the plaintiffs and the Board;

(2) whether the Board, having consented to go for arbitration, can and did subsequently withdraw their consent during the proceedings before the arbitrator.

After hearing counsel for both parties, Kulasekaram J. delivered judgment, as follows: —

"I do not think there is any justification for this application at all. The plaintiffs have not satisfied me that the defendants had in fact withdrawn from the arbitration. I am satisfied that the defendants submitted to arbitration and that at no time did they withdraw from the arbitration. All they did was to make a submission to the arbitrator that the arbitrator had no jurisdiction to hear this dispute because whatever the defendants did was in conformity with their powers under Hindu Endowments Act. The arbitrator having heard the arguments ruled that he had no jurisdiction to decide on those matters. He had no powers. If he did so he would be acting *ultra vires* of the Hindu Endowments Act.

If the plaintiffs felt that the arbitrator was not proceeding with the arbitration because the defendants had withdrawn their original consent to submit to arbitration then the plaintiffs in the first instance should have submitted to the arbitrator that irrespective of the withdrawal of the consent by the defendants he should proceed with the arbitration and make his award under the arbitration agreement. This the plaintiffs did not do.

Besides if the plaintiffs were not happy with the arbitrator's ruling they should have taken other steps to put that matter right.

In these circumstances I am afraid this present application is misconceived and therefore this application is dismissed with costs."

The appellants then appealed against the Order made by Kulasekaram J. dismissing their application for specific performance of the arbitration agreement.

Before us, counsel for the appellants submitted that Kulasekaram J. was wrong in holding that the arbitrator had conceded that he had no jurisdiction. It was contended that the arbitrator had simply backed out when his jurisdiction was challenged and that the challenge to his jurisdiction by the Board was an outright repudiation of the agreement to arbitrate. Accordingly, it was claimed that when the arbitrator turned his back on the appellants, their only remedy was to ask the court to compel the Board to abide by their agreement to arbitrate and to order the arbitrator to proceed with the arbitration.

Counsel for the Board maintained that the Board had never at any time withdrawn from the arbitration; that the Board had merely raised, as a preliminary point, the question of jurisdiction and that if the arbitrator had ruled on that point against the Board, the Board would have proceeded with the arbitration.

Counsel for the Board submitted further that as the appellants had not complied with the provisions of section 24 of the Hindu Endowments Act, these present proceedings were irregular; that the High Court had no jurisdiction to entertain such proceedings brought without an order of the Board and that the plaintiffs' application was rightly dismissed by the High Court.

Counsel for the appellants maintained that section 24 of the Act had no relevance to these proceedings; that the said section concerns the property of an endowment; that these proceedings did not concern the land, the temple or its funds; that they concern the rituals performed at the temple and that section 24 therefore did not apply to this matter. Counsel argued that the Board was not the supreme arbiter of rituals in the temple administered by the Board and that even if it was, that does not prevent the Board from going to arbitration.

It is now necessary to look at the Hindu Endowments Act. Section 2 of the Act defines "endowment" to mean "any endowment in land, building or money given or to be given for the support of any Hindu temple or Hindu shrine or school or other Hindu pious, religious, charitable or beneficial purpose". Section 3 constitutes the Hindu Endowments Board. Section 5 deals with membership of the Board. The Chairman and members of the Board are appointed by the Minister. Section 9 gives the Minister power to revoke the appointment of any member of the Board. Section 16 gives power to the Minister to order certain categories of endowments to be administered by the Board. Section 18 gives the Board power to appoint, subject to approval by the Minister, a Committee of Management for each endowment to act under the control of the Board. The Board has power, subject to the approval of the Minister, to remove any member of the Management Committee and to appoint another in his place. The general powers of the Board are laid down in section 19 and they include "all such powers as it would have had if it had been named as trustee in the instrument creating the endowment." Section 24, on which counsel for the Board relies, provides as follows: —

"24.—(1) Before any legal proceeding for obtaining any relief, order or direction concerning or relating to any endowment or the estate, funds, property or income thereof is commenced or taken by any person, the person shall transmit

to the Board notice in writing of the proposed proceeding, and such information as is requisite or proper or is required from time to time by the Board for explaining the nature and objects thereof.

(2) The Board may, if it thinks fit, by an order under its seal, authorize or direct any such proceeding to be commenced or taken with respect to that endowment either for the objects and in the manner specified or mentioned in that notice or for such other objects and in such manner and form and subject to such provisions for securing the endowment against liability to any costs or expenses, and to such other provisions for the protection or benefit of the endowment as the Board thinks proper.

(3) The Board may by such order as aforesaid require and direct that any proceeding so authorized by it with respect to any endowment shall be delayed during such period as seems proper, and every such order may be in such form as the Board thinks fit.

(4) Save as herein otherwise provided, no legal proceeding for obtaining any such relief, order or direction as aforesaid shall be entertained or proceeded with by the High Court or by any court or judge except upon and in conformity with an order of the Board.

(5) Nothing in this Act extends to or affects any legal proceeding in which any person claims any property or seeks any relief adversely to any endowment."

It is conceded by the parties that the Sri Mariamman Temple in South Bridge Road is an endowment administered by the Board. There is a Committee of Management and it acts under the control of the Board. It would appear from the history of this dispute that the Committee of Management took away the right of the Caulkers to appoint a Samayathar. They went to the Board but the Board did not make any decision. The Board could have decided one way or the other but it did not do so. The Caulkers should thereupon have asked permission of the Board under section 24 of the Act to take their dispute to court, their dispute being with the Ubayakarars. If the Board could not give a decision in the matter, they should have remained neutral and allowed the dispute between the Caulkers and the Ubayakarars to be settled by the courts and for this purpose the Board could have made an order under section 24(2) of the Act authorizing the plaintiffs to institute proceedings against the Ubayakarars for the determination of the dispute. The Board did not make such an order because the plaintiffs never applied to the Board for permission to proceed against the Ubayakarars in a court of law.

These proceedings were commenced by the plaintiffs without the requisite order from the Board under section 24 of the Act. Section 24(4) specifically disbars all courts from entertaining any legal proceedings brought without the sanction of the Board for obtaining relief concerning an endowment administered by the Board. And there is no doubt at all that the present proceedings concern and relate to such an endowment. In our judgment such proceedings cannot be brought without complying with section 24 of the Act. There is no validity in the submission that section 24 applies only to proceedings concerning the property of an endowment and that it does not apply to proceedings concerning other matters — such as rituals in a temple. In our judgment, it is clear from the scheme of the Act, that the Board has full powers in all matters relating to or concerning an endowment and the object of section 24 is to prevent unnecessary litigation concerning an endowment. The legislature has vested the Board with powers to scrutinise every proposed legal proceeding concerning an endowment and, to allow or refuse, as it thinks fit, proceedings to be brought having regard to the interests of the endowment. If the Board acts unreasonably and refuses to grant permission for the institution of proceedings which an applicant considers necessary, his remedy would appear to be to petition the Minister on the matter.

Returning to this appeal, it is in our opinion unnecessary to decide, for the purpose of this appeal, whether or not the Board, when appearing before the arbitrator, repudiated the agreement to arbitrate by challenging the jurisdiction of the arbitrator. It is quite obvious that the Board and its legal advisers had second thoughts on the matter in the light of the provisions of sections 18 and 19 of the Act. Nor is it desirable to determine whether or not the arbitrator was right in terminating the arbitration proceedings. The dispute is between the Caulkers and the Ubayakarars and both claim the right to nominate a Samayathar. In our view this dispute can be resolved in one of three ways:

(1) By the Board deciding the matter one way or the other. They have the power to do so.

(2) By arbitration between the Caulkers and the Ubayakarars.

(3) By the court.

The court can resolve this dispute only if the matter is placed before it with the prior sanction of the Board as already indicated. The present proceedings were commenced by the plaintiffs without compliance with section 24 of the Act which specifically forbids the courts to entertain any legal proceeding concerning an endowment which is brought in contravention of its provisions. The plaintiffs' application for the reliefs prayed was therefore rightly dismissed. The plaintiffs' appeal against the order by Kulasekaram J. fails and is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *J. B. Jeyaretnam & Co.; Murphy & Dunbar.*